
COMPLIANCE WITH AND ENFORCEMENT OF THE BASEL CONVENTION ON CONTROL TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND THEIR DISPOSAL

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SUMMARY

The survey among Parties to the Basel Convention provided useful information on the level of implementation of the Convention. The progress made in implementation as well as areas where obstacles persist could be identified. Parties also identified key elements where assistance or cooperation would be required for full implementation of the Basel Convention.

1 INTRODUCTION

The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, adopted by the diplomatic conference in Basel in 1989, was developed under the auspices of the United Nations Environment Programme (UNEP) and entered into force in May 1992. As of July 1998, the Basel Convention has 120 states and the European Community as Parties. The rapidly increasing number of Parties reflects the growing awareness and interest of States in this important sector of environment and health protection. The following are the key objectives of the Basel Convention:

- To reduce transboundary movements of hazardous wastes and other wastes subject to the Basel Convention to a minimum consistent with their environmentally sound management.
- To dispose of the hazardous wastes and other wastes generated, as close as possible to their source of generation.
- To minimize the generation of the hazardous wastes in terms of quantity and degree of hazard.
- To ensure strict control over the movements of hazardous wastes across borders as well as the prevention of illegal traffic.
- To prohibit shipments of hazardous wastes to countries lacking the legal, administrative and technical capacity to manage dispose them in an environmentally sound manner.
- To assist developing countries and countries with economies in transition in environmentally sound management of the hazardous wastes they generate.

The Basel Convention is the broadest and most significant international treaty on hazardous wastes presently in effect. The impact of hazardous wastes on the environment has large repercussions, particularly on the quality of waters and land. Effective regulation

of the management and disposal of hazardous wastes require cooperation at the global level. The Basel Convention is the first and foremost global legal instrument regulating the transboundary movement of hazardous wastes and their disposal.

2 MAIN PROVISIONS OF THE CONVENTION

The overall goal of the Basel Convention is to protect human health and the environment against the adverse effects which may result from the generation, transboundary movements and management of hazardous and other wastes. To achieve this a number of interrelated objectives are to be fulfilled:

- Reducing transboundary movements of wastes to a minimum consistent with their environmentally sound and efficient management, and controlling any permitted transboundary movement under the terms of the Convention.
- Minimizing the quantity and the hazards posed by wastes generated and ensuring their environmentally sound management including the treatment of these wastes as close as possible to their source of generation.
- Assisting developing countries in environmentally sound management of the hazardous and other wastes they generate.

In other words, the aim of the Basel Convention is to help reduce the number of transboundary movements and the quantity of hazardous wastes to a minimum, and to manage and dispose of these wastes in an environmentally sound manner.

Article 4 provides general obligations to the Parties including:

- Parties exercise their right to prohibit the import of hazardous wastes.
- Parties shall prohibit the export of hazardous wastes to the Parties which have prohibited the import of such wastes.
- For wastes not specifically prohibited by the importing State, Parties shall prohibit the export of hazardous wastes if the importing State has not consented in writing to the specific import.
- Each Party shall prevent the import of hazardous wastes if it has reason to believe that the wastes in question will not be managed in an environmentally sound manner.
- Any Party shall not permit the export and/or import of hazardous wastes involving a State that is not a Party to the Convention.
- Parties agree not to allow the export of hazardous wastes for disposal to Antarctica.

According to Article 11, the Parties may enter into bilateral, multilateral or regional agreements or arrangements regarding transboundary movements of hazardous wastes if such agreements do not derogate from the environmentally sound management as required by the Convention. Parties should notify the Secretariat of any bilateral, multilateral or regional agreements or arrangements and those which they have entered into prior to the entry into force of this Convention, for the purpose of controlling transboundary movements of hazardous wastes and other wastes which take place entirely among the Parties to such agreements.

Article 4 paragraphs 1(a) and (b) states that Parties to the Basel Convention exercise the right to prohibit the import of hazardous wastes. Article 4, paragraph 1(b) also states that Parties shall prohibit the export of hazardous wastes to the Parties which have prohibited the import of such wastes. The First Meeting of the Conference of the Parties referred to the prohibition of transboundary movements of hazardous wastes from industrialized to developing countries. Recognizing the increasing desire and demand of the international community for the prohibition of transboundary movements of hazardous wastes and their disposal especially in developing countries, the Second Meeting of the Conference of the Parties adopted Decision II/12. It prohibited immediately all transboundary movements of hazardous wastes which were destined for final disposal from OECD to non-OECD countries. All transboundary movements of hazardous wastes from OECD to non-OECD countries destined for recycling or recovery operations is to be phased out by 31 December 1997 and prohibited as of that date.

The Third Meeting of the Conference of the Parties adopted Decision III/1 on the Amendment to the Convention. This amendment stated that Parties which are members of OECD, EC, Liechtenstein are to prohibit immediately all transboundary movements of hazardous wastes destined for final disposal to other States. These States should phase out by 31 December 1997 and prohibit as of that date all transboundary movements of hazardous wastes which are destined for recover, recycling, reclamation, direct reuse or alternative uses. A critical factor acknowledged by the Conference of the Parties was that transboundary movements of hazardous wastes, especially to developing countries, have a high risk of not constituting environmentally sound management of hazardous wastes as required by the Convention. The Parties also recognized the need to cooperate and work actively to ensure the effective implementation of this decision. Moreover, this amendment needs to be ratified by two thirds of the Parties present at the third Conference of the Parties in order to come into force.

In the light of increasing system of control measures under the Basel Convention the Conference of the Parties decided to study the issues related to the establishment of a special mechanism for monitoring the implementation of and compliance with the Basel Convention. Accordingly the Consultative Sub-group of Legal and Technical Advisers was requested in 1995 to perform this function.

3 IMPLEMENTATION CONTROL, NON-COMPLIANCE PROCEDURE AND DISPUTE SETTLEMENT

Recently a non-compliance regime mainly based on the Ozone Montreal Protocol and to some extent on the European Sulphur Protocol regime became a critical condition for proper implementation control and effectiveness of international environmental agreements. The Ministerial Conference in Lucerne 1993 urged Contracting Parties to environmental conventions to ...*“work towards non-compliance regimes which:*

- *aim to avoid complexity;*
- *are non-confrontational;*
- *are transparent;*
- *leave the competence for decision-making to be determined by the Contracting Parties;*

- *leave the Contracting Parties to each Convention to consider what technical and financial assistance may be required within the context of the specific agreement;*
- *include a transparent and revealing reporting system and procedures, as agreed by the Parties.” (Paragraph 23.1 of the Declaration by the Ministers of Environment).*

The element of assisting a State Party which has not fully complied with the provisions of the Protocol instead “punishing” it, is protecting the effectiveness of the legal regime established by the Protocol and provides the other State Parties with the belief and expectation that if in the future they would find themselves in the same situation they would be protected rather than incriminated; this also helps getting from the Contracting Parties true reports on the state of implementation of a treaty which make the system of achieving global goals of agreement more effective and transparent.

An indicative list of measures that might be taken by a meeting of the Parties in respect of non-compliance with the Protocol attached to the Non-Compliance Procedure adopted by the fourth meeting of the Parties to the Montreal Protocol puts on the top of the list of measures “*Appropriate assistance, including assistance for the collection and reporting of data, technical assistance, technology transfer and financial assistance, information transfer and training*” followed by “*issuing cautions*” and “*suspension of specific rights and privileges under the Protocol...*”.

This approach to non-compliance which could be considered as too “soft” and unnecessarily “negotiable” is still in the environmental agreements more suitable for achieving the overall goals of environmental treaties and also allows all Parties to a treaty to work towards what could be called “global capacity building process for implementation and effectiveness of environmental regimes.”

This softness can, however, create difficulties while applying to the cases of illegal traffic and other similar breaches of the provisions of treaties which could be results of “malice and greed” rather than results of lack of technical and/or administrative capacity. In such cases, lack of decision-making power by the Compliance Committee should be also looked at as a serious handicap of a system.

The Contracting Parties to the Basel Convention also have tended to create a system of non-compliance similar to the one of the Montreal Protocol, rather than to start using the system of settlement of disputes envisaged for in the Convention (Article 20 - Settlement of Disputes and Arbitration - Annex VI to the Convention), basing its reasoning on the assumption that non-compliance with the Convention may be due to practical difficulties in implementation rather than on intent.

The Basel Convention contains some specific provisions for monitoring and supervision of state parties’ implementation of and compliance with obligations arising under it. First of all, it requires substantial adjustments in the laws or administrative practices of Parties to the Convention which raise complex compliance issues. Since entry into force of the Convention, controlling compliance and monitoring implementation has become even more of a challenge after adoption of several decisions by the Conference of the Parties (COP) — in particular Decision II/12 by the Second Meeting of the COP — and by the work of various subsidiary bodies set up to facilitate implementation of the Convention. In December 1994, the Open-ended Ad Hoc Committee for the Implementation of the Basel Convention, in Committee Decision II/3 on the Evaluation of the Effectiveness of the Convention, requested

the Secretariat of the Basel Convention to arrange for a “*study on the monitoring of the implementation of and compliance with the obligations set out by the Basel Convention and any other related matters.*”

The provisions of the Basel Convention do not expressly envisage the establishment of a special “implementation/compliance control” procedure. Yet, several of its articles address aspects of multilateral implementation and compliance control. Article 19 states that “*Any party which has reason to believe that another Party is acting or has acted in breach of its obligations under this Convention, may inform the Secretariat thereof, and in such an event, shall simultaneously and immediately inform, directly or through the Secretariat, the Party against whom the allegations are made. All relevant information should be submitted by the Secretariat to the Parties.*” There is no clear statement in the Convention what would be then the role of the Contracting Parties in such cases. Article 5 requires the Parties to establish competent authorities and focal points to facilitate implementation of the Convention; Article 13 commits the parties to provide annual reports to the Conference of the Parties on matters bearing directly on transparency with regard to transboundary movements and disposal of hazardous wastes. Article 16 calls upon the Secretariat to perform a number of functions relevant to monitoring of implementation and compliance, such as to act as a clearing-house for information on hazardous waste movements and disposal, to expedite the flow of information among parties, and to assist parties in identifying cases of illegal traffic of waste.

There are some important implementation/compliance control functions entrusted to the Secretariat by the Convention itself and the various decisions of the Conference of the Parties. The Basel Convention, however, allocates only a facilitating role to the Secretariat as regards compliance control. Since the Convention entered into force, a number of initiatives have been under review or been approved by the Conference of the Parties that aim at further enhancing transparency with regard to transboundary movements of hazardous wastes globally, such as the streamlining of notification and movement documents, the general strengthening of the transmission of information pursuant to Article 13, and improvement of the information management system of the Convention. Taken together these provisions do not, however, amount to more than a rudimentary international system of compliance control. Specifically, they fall short of establishing the requisite setting for the second phase of compliance control, namely to the review of the information transmitted by the Parties and to an institutionalized process of verification. That is why, as referred above, in response to the adoption by the COP of Decision II/12, it was noted that “*[e]ffective implementation of the whole Convention could only be assured with the introduction of an effective system for the monitoring and evaluation of compliance by the Parties with the Conventions as the provisions at present contained in Article 19 were not sufficient.*” (Australian proposal).

In recognizing the need for improved implementation/compliance control, the First Meeting of the Conference of the Parties in 1992 established the Open-ended Ad Hoc Committee as a mechanism necessary for the implementation of the Basel Convention. This Open-ended Ad Hoc Committee has been entrusted with a variety of tasks, all relevant to implementation of or compliance with the Basel Convention. The further need for strengthening the system became obvious in particular after adoption of the Ban Decision (II/12) in March 1994. The Open-ended Ad Hoc Committee executes several different tasks: in respect of some acts as an executive body, of others in a basic advisory or policy-making body. Because the Committee is involved in a broad range of activities, it not likely to develop the required technical expertise to verify the data submitted by the parties, as well as to evaluate performance of the Parties in relation to their obligations under the Convention.

On this basis it was proposed to the 3rd Conference of the Parties (September 1995) to establish under the Basel Convention a system to strengthen compliance with its provisions by establishing in the future a special Compliance Committee based mainly on the Montreal Protocol example. The Conference referring again to Article 19 of the Convention on Verification requested the Consultative Sub-group of Legal and Technical Experts to study all issues related to the Convention and its design, and to report its findings to the fourth meeting of the Conference of the Parties to the Basel Convention.

Related to the present regime existing under the Basel Convention provides for a significantly strengthened reporting system. Such a system constitutes one of several aspects of a monitoring of implementation and compliance regime, which, to be fully effective would need an institutional framework having the required technical expertise to match the technical complexity of the Basel regime in order to carry it out impartially and objectively.

Recent refinement of some technical provisions of the Basel Convention carried out by the Technical Working Group of the Convention and adopted by the Fourth Conference of the Parties in Kuching on February 1998 makes it evident that the assessment and evaluation of information reported by State Parties as evidence of compliance with their obligations under the Convention would require a significant degree of technical know-how on the part of those carrying out this monitoring and review functioning. In addition, the more the legal system of the Convention is tightened, the need is greater of a strict institutionalized system along lines similar to the existing non-compliance system established as part of the Montreal Protocol on Substances that Deplete the Ozone Layer. This system should only serve as an example and has to be modified in order to take the specificities of the Basel Convention into account.

What seems to be of special importance in a possible future system of non-compliance under the Basel Convention is the membership in the Implementation Committee, in particular the role of NGOs, transparency and access to its proceedings. This is linked to a certain extent, at least in relation to the Basel Convention, to the right to initiate action concerning an alleged violation of the agreement.

It has happened within the Basel Convention that an alleged violation of the treaty was brought to the attention of the Secretariat by another body than the injured state or another party to the treaty, namely by a NGO (Greenpeace) led to an amicable solution to the problem. No environmental treaty, however, gives a right to NGOs nor to individuals to initiate proceedings against a Party. In practical terms, however, it could sometimes be easier for another body than the Contracting Party to react to another Party's breach of a treaty obligation. Formalization of such an approach which exists to a certain extent in practice, could somehow not be easy nor welcomed by some of the Parties who consider themselves the only "sovereign owners" of the treaty. Individual complaints, as it exists in various human rights' treaties, may play an important role, as it does in the European Community through claims in national courts on the provisions of a multilateral environmental agreement, provided that the agreement is part of EC law (Textbook on EEC Law, 1998, p.31).

This right is limited to the cases in which individuals suffered damages. As far as NGOs are concerned the Basel as well as the Montreal treaties admit NGOs to participate at their meetings as observers, sometimes very active observers. This does not, however, give them the formal right to initiate action against a member State in breach of a treaty in question. They can, however, and sometimes they do, trigger the initiation of action through the Secretariat or another Party, by bringing "the case" to the light and "advertising" it to the public. It could, however, be difficult to allow NGOs or/and individuals and other groups to attend the closed meetings of implementation bodies.

As for the composition of implementation bodies/committees it was the clear understanding at the time of discussion at the meetings under the Basel Convention that there is a clear preference for these bodies to be composed of the Contracting Parties rather than individuals. While the Montreal Protocol Implementation Committee has a very limited membership (10 countries), the Climate Change Convention's Subsidiary Body for Implementation is open to participation by all Parties (Article 10), as well as is the Open-ended Committee for Implementation of the Basel Convention which was not exactly meant as a compliance body, but which was originally established to perform some of the functions of the compliance body (i.e. its role in assessing the conformity of all the bilateral and multilateral agreements or arrangements with the stipulation of Article 11 of the Convention).

It should be remembered that the effectiveness of a body is usually inversely proportional to its size; a smaller body is usually more effective than a committee with unlimited memberships. It seems, however, that in the case of the Basel Convention the larger body approach prevails among Parties as a guarantee of reflection of various countries' interests. It should be emphasized, however, that a large number of members can lead to unnecessary politicalization of the implementation body which is already the case with some meetings under the Basel Convention. Also unlike the Montreal Protocol, the subject of the Basel Convention's possible breaches affects usually two or three countries rather than protecting a global commons which is the case of the ozone layer treaty.

In the case of the Basel Convention breaches of compliance would in practice lead to the assessable appearance of a damage. This could, therefore, lead to possible liability claims. Therefore, in the study related to the Basel Convention's compliance system, clear reference was made to the need to link it with the liability and compensation regime being developed under the Basel Convention. In the Basel Convention it would also probably be easier to link the compliance regime with the settlement of disputes regime which in the case of Montreal exists as two independent - but not mutually exclusive - systems. In relation to Basel the dispute settlement could be developed rather as "the second tier" approach to be triggered after the exhaustion of the compliance procedure.

4 THE POSITION OF PARTIES TO THE BASEL CONVENTION

As referred to above the Consultative Sub-group of Legal and Technical experts requested the Secretariat of the Basel Convention to *"invite Parties and Signatories to provide in 1996 information on what steps Parties and Signatories are taking to implement the provisions of the Basel Convention, difficulties which States could be facing when seeking compliance with the provisions of the Basel Convention, and, in particular, how States deal with illegal traffic, and how they comply with Articles para. 4 and 6 of the Convention, and areas in which Parties may require assistance or benefit from the sharing of national experiences."*

As requested by the Consultative Sub-group, the Secretariat drew up a questionnaire, which was circulated to all Parties and observer states by letter in October 1997. The questionnaire encountered considerable feedback: In total. About 50 responses were received.

The questionnaires provided useful documentation and a basic national profile for each of the replying countries. Furthermore, the standardization of the questionnaires allowed a statistical evaluation of the replies.

4.1 Transposition into national law

In almost two thirds of the Parties there is currently national legislation on the control of transboundary movements and the environmentally sound management of hazardous wastes in force. Several countries have enacted complete new national legislation implementing the Basel Convention, in some countries the previously existing legislation has been adapted in order to implement the Basel Convention, and in some other countries the previously existing legislation has remained in force unchanged since the ratification of or accession to the Basel Convention.

With regard to the modalities of adoption of national legislation, several Parties adopted their legislation implementing the Basel Convention as one main legislative tool. Others adopted it as a separate section in the main environmental legislative instrument (e.g., Environmental Protection Act), whereas some countries enacted their legislation as a series of sectoral laws (e.g., control of transboundary movements, waste streams, environmentally sound management). Few Parties adopted the legislation implementing the Basel Convention as a section within their general waste law.

In contrast to this, in over one third of the countries there is currently no national legislation implementing the Basel Convention in force. In most of the countries which do not yet have such legislation in force, relevant laws are currently under preparation, in a few others the process of preparation of such legislation has not yet been initiated.

4.2 Institutions, Administration, Budget

The overwhelming majority of the Parties set up or designated a Competent Authority and Focal Point. In a few countries the Competent Authority and the Focal Point have not yet been designated.

Most of the countries designated one single Competent Authority, few others established two or more Competent Authorities.

A majority of the Parties set up the necessary administrative instructions and procedures for these authorities to operate. In several other countries the situation is inadequate and in a few no such instructions or procedures were established. With regard to the provision of staff and resources for the authorities, the situation is problematic: in a majority of countries staff and resources are insufficient. In several countries the required staff and resources were provided, in few this is not at all the case.

Furthermore, only in some countries is there an adequate administrative system and the infrastructure for the safe management (collection, sorting, transport, recycling, recovery, disposal) of different hazardous waste streams. In several parties the situation with regard to the administrative and infrastructure capacity for hazardous waste management is inadequate, and in several others such a capacity does not exist.

4.3 Enforcement

In a large number of Parties the situation with regard to the enforcement of national laws is still insufficient. Whereas in several countries a national mechanism for the monitoring and control of full and proper compliance with laws on hazardous waste is fully established and operating, in some countries such enforcement of hazardous waste legislation is practically non-existent.

In a majority of countries adequate sanctions and penalties are imposed in the case of contraventions, in several others the situation is insufficient and in a few there is no capacity for this aspect of enforcement. With regard to the licensing of hazardous waste management operations, in several countries such a system is set up, but in several others is inadequate or not available at all.

In several Parties a mechanism has been set up for consultation and co-operation with industry and other NGOs as well as for the information of the public. In many countries public participation is still insufficient, in some others the principles of public participation have not yet been institutionalized.

5 DIFFICULTIES OF IMPLEMENTATION AND COMPLIANCE

5.1 Transposition into National Law

A majority of those Parties which have enacted a national legislation reported that their legislation is responding partly to the Basel Convention, but that gaps can exist. Several Parties confirmed that their national legislation is responding entirely to the provisions of the Basel Convention. Few countries consider their national legislation being in conflict with the Basel Convention.

The main difficulty in developing/improving/adapting national legislation is the lack of resources, followed by the lack of expertise. Several countries are concerned about the lack of awareness or insufficient international/regional cooperation. Few countries also reported the lack of a national policy as being an obstacle.

5.2 Institutions, Administration, Budget

The main problems presented in setting up and operating the Competent Authority and the Focal Point are the lack of resources, training, staff and expertise. In several countries the lack of awareness is also problematic, some countries reported a lack of regional/international cooperation in general.

While setting up or operating an adequate administrative system as well as the infrastructure for the safe collection, sorting, transport, recycling, recovery, disposal of different hazardous waste streams, the main difficulties encountered were the lack of resources, expertise, staff and awareness. Other problems encountered are the lack of inter-agency consultation and lack of regional/international co-operation. Also reported were the lack of standards and tracking systems, and lack of legislation and guidelines.

5.3 Enforcement

On the level of enforcement, the main problems of implementation are the lack of financial resources, lack of training for enforcement personnel and the lack of staff. Equally important are the lack of testing and sampling facilities and problems with the identification of hazardous wastes. Many countries reported the lack of inspections and of awareness of stakeholders.

Furthermore, several Parties have problems with border control or suffer lack of interagency consultation, lack of a licensing system for hazardous waste facilities, of public participation, of sufficient sanctions and penalties and of effective regional cooperation. Also reported was the lack of domestic standards and tracking systems.

6 PREVENTION OF ILLEGAL TRAFFIC

6.1 Legislation

A large number of Parties have in force stringent legislation on the repression and prevention of illegal traffic. In several countries such legislation is considered to be insufficient. Some other countries do not yet possess such legislation.

Most of the countries consider illegal traffic in hazardous waste being a criminal offense. In several countries such a provision is still missing.

6.2 Institutions, Administration, Budget

Several countries have established adequate procedures for sending back illegal shipments. In several other Parties such procedures would be insufficient or in some countries even missing.

In many countries the interministerial coordination in preventing and combatting illegal traffic is still insufficient. Several other countries have established sufficient interministerial coordination, whereas in some countries there is no effective coordination.

6.3 Enforcement

The most important measure applied by Parties in order to prevent and combat illegal traffic is border control, followed by transport control and the infliction of sanctions and penalties in the case of contravention. Many countries also undertook site inspections.

Several countries proceed with testing and sampling or by licensing of installations and the withdrawal of licenses in the case of contravention. In some countries adequate information systems have been set up.

6.4 Main obstacles in Preventing and Combatting Illegal Traffic

The main obstacles encountered in the prevention of illegal traffic are the lack of training and of facilities for testing and sampling, followed by lack of resources, the lack of information, the lack of staff and of inspections or transport control. Also important are problems of border control and the lack of awareness.

Furthermore, several countries deplore lack of legislation, administrative problems. Lack of inter-institutional and regional or international co-operation or a system of licensing/withdrawal of licenses. In some countries enforcement is insufficient.

A majority of Parties has already experienced and recorded cases of illegal traffic in hazardous wastes. In several other countries no cases of illegal traffic were recorded. Some countries submitted no information.

7 TRANSBOUNDARY MOVEMENTS BETWEEN PARTIES

7.1 Legislation

In a majority of Parties there is a national legislation in force implementing the written notification and consent procedure of the Basel convention. Nevertheless, in some countries such legislation is considered insufficient and in several non-existent.

7.2 Institutions, Administration, Budget

Many parties have set up adequate administrative instructions for the Competent Authority for the operating of the control procedure. In several other countries such administrative instructions are insufficient, in some they are missing.

A majority of Parties confirmed using the recommended Basel Convention notification/movement document (or the similar EC/OECD forms) by the Competent Authority. In some countries the forms are not used on a regular basis or not at all.

Several Parties have established a system of coverage of transboundary movements of hazardous wastes by insurance, bond or guarantee. In some countries such a system is inadequate, in several other countries there is no such system.

7.3 Enforcement

By far the most frequent measure which is applied in order to enforce the written notification and consent procedure is border control. Several countries undertook site inspections and transport controls. Several Parties also apply testing and sampling or have set up adequate information systems. Few countries reported that there are no enforcement measure applied at all.

7.4 Main Obstacles

The main obstacles encountered in implementing the control procedure are lack of resources, lack of training, lack of facilities for testing and sampling, lack of inspections or transport control, lack of staff and lack of legislation. Less important are administrative problems, lack of border control, lack of inter-institutional co-operation and lack of regional and international cooperation.

8 CONCLUSION

In conclusion, a clear picture emerges that much needs to be done to improve compliance with and enforcement of the terms of the Basel Convention.

8.1 Steps taken by Parties to implement the Basel Convention

Almost two thirds of the Parties have enacted a national legislation on the control of transboundary movements and management of hazardous wastes. In most of the countries which do not yet have such a legislation the preparation is under way. Furthermore, the overwhelming majority of countries has designated (a) Competent Authority(ies) and a Focal Point and in most cases the necessary administrative procedures have been established. Nevertheless, in a majority of countries these institutions are still lacking the necessary staff and resources. Only in some countries there are in a place adequate administrative systems and the infrastructure for the safe management (collection, sorting, transport, recycling, recovery, disposal) of different hazardous waste streams. In several countries the situation is inadequate, in several others such capacity does not exist.

8.2 Difficulties faced by Parties when seeking compliance with the Basel Convention

A majority of Parties consider that their national legislation is responding partly to the Basel Convention, but gaps still exist. The main difficulties in developing/improving/adapting national legislation are the lack of resources and the lack of expertise. The main problems in setting up and operating the Competent Authority(ies) and the Focal Point are the lack of resources, training, staff and expertise. The main difficulties encountered in establishment of an administrative system and the infrastructure for management of hazardous waste are lack of resources, of expertise, of training for personnel, of staff and lack of public awareness. Furthermore, in more than 50% of Parties the enforcement system of the national laws is not adequate, in some others such a system is practically non-existent. In many countries there is a lack of consultation and co-operation with industry and other NGOs as well as lack of information on these issues as well as inadequate public awareness and information dissemination. On the level of enforcement, the main problems of implementation are the lack of financial resources, of training of personnel to deal with enforcement, the lack of staff, the lack of testing and sampling facilities and problems with the identification of hazardous waste.

8.3 Prevention of illegal traffic

In more than 50% of the Parties replying to the questionnaire the legislation on the prevention and punishment of illegal traffic is inadequate or missing. Nevertheless, more than two thirds of the Parties consider illegal traffic to be a criminal offense. Furthermore, in a majority of Parties procedures for returning illegal shipments are inadequate or missing. In more than half of the Parties also interministerial coordination in preventing and combatting illegal traffic is insufficient or non-existent. The most frequent enforcement measures applied to prevent and combat illegal traffic are the border control, transport control and infliction of sanctions in case of contravention. The main obstacles encountered in the prevention of illegal traffic are the lack of training as well as the lack of facilities for testing and sampling. Also important are the lack of resources, the lack of information, lack of staff and lack of inspections or transport control. A majority of Parties replying to the questionnaire recorded cases of illegal traffic in hazardous wastes.

8.4 Compliance with Article 6 ("Transboundary Movements between Parties") of the Basel Convention

In a majority of Parties there is national legislation in force implementing the written notification and consent procedure of the Basel Convention. Furthermore, a majority of Parties uses the recommended notification/movement documents. Many Parties have also set up administrative instructions for the operating of the control procedure. Nevertheless, many countries have not yet established a system of coverage of transboundary movements of hazardous wastes by insurance, bond or financial guarantees, and in some others such a system is inadequate. Less than half of the Parties have an adequate system in place. The main obstacles encountered in implementing the control procedure for transboundary movements between Parties are the lack of resources, the lack of training, the lack of facilities for testing and sampling, the lack of inspections or transport control, lack of staff and lack legislation.

8.5 Assistance and Cooperation

Parties replying to the questionnaire indicated areas in which assistance would be required or where authorities may benefit from the sharing of national experiences as follows:

- Need for further development and updating of national legislation.
- Facilities for testing and sampling.
- Hazard characterization and hazardous waste identification.
- Training of personnel dealing with hazardous waste (custom officers, managers, environmental inspectors, police officers, etc.)
- Establishing enforcement procedures and procedures and programmes.
- Developing of a monitoring system.
- Developing technical standards in the field of environmentally sound management.
- Transfer of appropriate technologies for minimization of generation of HW and for their disposal in an environmentally sound way.

The fourth meeting of the Conference of the Parties to the Basel Convention (Kuching, 23-27 February 1998) adopted Decisions IV/21 entitled "Monitoring the implementation of and compliance with the obligations set out by the Basel Convention." By this decision, the Conference of the Parties requested the Consultative Sub-group *"to continue its step-by-step approach to examining the relevant issues related to the establishment of a mechanism or procedure for monitoring implementation of and compliance with the Basel Convention with a view to recommending, as soon as practicable, the best way to promote full implementation of the provisions of the Basel Convention, including whether or not such a mechanism or procedure would be required and, to the extent appropriate, what its design might be."*

In this context, the relationship of this system with the issue of settlement of disputes was noted, in the sense that compliance will avoid disputes. Reference was also made to the relationship of compliance with the determination of which wastes are subject to the Basel Convention. The role of the World Customs Organization in the effective implementation of the Convention, by providing a clear nomenclature for wastes, was underlined. The Sub-group took note of the draft elements and principles for a future regime on monitoring of implementation and compliance, submitted by an informal group chaired by Switzerland, attached to this report as Annex 1. The Sub-group agreed that these elements and principles should serve as a basis for further discussions. Accordingly, the Sub-group decided that Parties should be invited to provide the following to the Secretariat:

- Proposals for the nature and composition of the future regime, based on the options presented by the informal group.
- Draft elements of terms of reference for the future regime.

The Secretariat was requested to prepare a compilation of the submissions received, in time for the meetings scheduled to be held in 1999.

